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Darci Sakamoto  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Maksim KADIU

Serial No.: 09/543,442

Filing Date: April 5, 2000

For: MAGNETIC SHORING DEVICE

Examiner: G. Hartmann

Group Art Unit: 3671

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**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action dated February 6, 2004, (Paper No. 14) which set forth a restriction requirement for pending claims 1-3, 16-40. Claims 41-54 were withdrawn as being directed to a previously non-elected invention. The Examiner notes that the Applicant received an action on the merits on the originally presented claims and that claims 41-54 are subcombinations of the combinations originally presented and hence are independent of or distinct from those original claims.

In any case, a response is due by March 6, 2004. Accordingly, this response is timely filed.

Specifically, the Examiner indicates that the claims should be grouped as follows:

- I. Claims 1, 16, 19, 21, 23, 25, 27, 29, 32, 35 and 38, drawn to a device for shoring trenches, classified in class 405, subclass 282.
- II. Claims 2, 17, 30, 33, 36 and 39, drawn to a device for shoring pits, classified in class 405, subclass 272.
- III. Claims 3, 18, 20, 22, 24, 26, 28, 31, 34, 37 and 40, drawn to a shoring device, classified in class 405, subclass 276.

Applicant hereby elects the Group III claims, with traverse. This election is only for the specific purpose of complying with the requirements of 37 CFR 1. 143.

Further, Applicant requests reconsideration of the holding that claims 41-54 were functionally non-elected by prior prosecution. Clearly, the original claims were informal. The Examiner's thoughtful comment that the magnetic variation of the claimed concept was patentable is appreciated. Many of the variations as now claimed require the presence of a magnetic component. However, other variations -- such as those found in claims 41-54 -- do not include that specific requirement. Claim 1, as originally filed, included a limitation reciting "each panel having laterally on either side a vertical guide channel and/or magnetic flat bars for the connection with the rail post..." This can be considered to be in the nature of a Markush group of "guide channels" and "magnetic flat bars." Consequently, the variations in claims 41-54 are of the same type of subcombination as are those outlined in the three Groups specified in the Restriction Requirement. Applicant would elect claims 41-54 if given the opportunity. Since claims of the type found in claims 41-54 have been previously examined, Applicant believes that claims 41-54 have been improperly withdrawn and request that they be re-instated and considered to be elected with traverse.

Applicant expressly reserves his right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

Applicant requests examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document or the Patent Office determines that an extension or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 543572000100.

Respectfully submitted,

Dated: March 5, 2004

By:

  
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